THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.Nos.5825, 6231, 6323, 6339, 8140, 8141, 8142, 8143, 8144,8650, 8919, 8959, 8960, 10483,10484, 10540, 10690, 10692, 10753, 10754, 10755, 10779, 10780, 10924, 10925, 11235,11236, 11701, 11715, 11788,12023, 12024, 12037, 12047, 12048, 12050, 12051, 12058, 12102, 12105, 12109, 12110, 12276, 12277, 12278, 13028, 13039, 13080, 13099, 13478, 14211, 14215, 14720, 16990, 19235 & 19243 of 2006

Date : 28-9-2006

W.P.No.5825/2006

Between :

M/s.Kasturi Brothers, Dress Materials
& Saree Shop, 16-11-740/5/A,
Gaddiannaram, Dilsukhnagar,
Hyderabad .. Petitioner

And

The Municipal Corporation of Hyderabad
Represented by its Commissioner, Tankbund
Road, Hyderabad and another .. Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.Nos.5825, 6231, 6323, 6339, 8140, 8141, 8142, 8143, 8144,8650, 8919, 8959, 8960, 10483,10484, 10540, 10690, 10692, 10753, 10754, 10755, 10779, 10780, 10924, 10925, 11235,11236, 11701, 11715, 11788,12023, 12024, 12037, 12047, 12048, 12050, 12051, 12058, 12102, 12105, 12109, 12110, 12276, 12277, 12278, 13028, 13039, 13080, 13099, 13478, 14211, 14215, 14720, 16990, 19235 & 19243 of 2006

COMMON ORDER:

1. These matters though appearing under the caption "Interlocutory", at the request of the Counsel on record the matters are being finally disposed of.

2. These Writ Petitions are filed by different writ petitioners as against the Municipal Corporation of Hyderabad and others and in several of the Writ Petitions, the 3rd respondent is Nest Enterprises Private Limited and in a couple of Writ Petitions the said Nest Enterprises Private Limited is shown as 1st respondent. The factual matrix and the questions of Law involved in all these matters being the same and further in view of the fact that common counter affidavit is filed by the Municipal Corporation of Hyderabad, all these matters are being disposed of by this Common Order.

3. In all these Writ Petitions, the respective writ petitioners had prayed for a writ of mandamus declaring the action of the respondents in treating the name board/board frames fixed by the respective petitioners as being covered by Sections 420 and 421 of the Hyderabad Municipal Corporations Act 1955, hereinafter in short referred to as "Act" for the purpose of convenience, and making demand of fee by the respective demand notices as illegal and arbitrary. These petitioners are different

trading companies, traders and business men carrying on different types of businesses and in all these matters in relation to their business establishments, some name board/board frame or the like have been erected at conspicuous places of their establishments with a view to facilitate easy and convenient identification of the nature of business and the name of the shop or establishment by the customers. In almost all these matters the 3rd respondent and in a couple of matters the 1st respondent i.e., Nest Enterprises Private Limited, Authorised Advertisement Fee Collection agent of Municipal Corporation of Hyderabad, had issued notices demanding the respective fee and questioning the same the Writ Petitions are filed on several grounds.

4. A common counter affidavit is filed by the Municipal Corporation of Hyderabad wherein it is stated that the petitioners herein have displayed Glow Sign Boards at their business premises without prior written permission of the Commissioner, Municipal Corporation of Hyderabad as required under Section 421(1) r/w Section 622(2) of the Act and according to Section 421 of the Act, no person shall without written permission of the Commissioner, erect, exhibit, fix or retain any advertisement whether now existing or not upon any land, building, wall, hoarding or structure. It is also further stated that the petitioners herein had failed to obtain the permission and unauthorisedly displayed Glow Sign Boards in contravention of the provisions of the Act and as such the respondent No.3-Nest Enterprises Private Limited, had issued demand notices for payment of advertisement fee, which is valid and as per the provisions of the Act. It is also stated that the petitioners themselves had admitted that they are carrying on business by erecting Glow Sign Boards in order to facilitate easy and convenient identification of the nature of business of the name of the shop for their customers and authorities and the same is in vogue for the last many years. It is also stated that the illuminated boards erected and exhibited by the petitioners

at their shops is an advertisement, but the petitioners have misinterpreted the meaning and definition of advertisement to their own convenience. It is also further stated that as per Sections 420 and 421 of the Act, advertisement means any word, mode, sign, character, letter, representation or illustration applied to any surface or structure and displayed in any manner whatsoever, whether illuminated or not in the nature of and employed wholly or in part for the purpose of advertiser or to give information or announcement regarding or to attract or to direct the public to any place, person, public, public performance, article or merchandise whatsoever. It is also further stated that the 3rd respondent-Nest Enterprises Private Limited, had issued demand notices for payment of advertisement fee within seven days from date of receipt of the said notices on behalf of the Municipal Corporation of Hyderabad in accordance with Section 421(1) r/w Section 622 (2) of the Act in the capacity of agent. It is also stated that the Municipal Corporation of Hyderabad had outsourced the collection of advertisement fee authorizing 3rd respondent to collect advertisement fee on Neon Glow/Neon Sign Boards attached to shops, establishments, offices, etc., including Arches, Balloons, Brand Names, Mobile Ads, Short Films, Slides, temporary shop attachment boards, umbrellas, bus shelters, pole panels, banners vide proceedings No.68/AD3/Advt./MCH/2006/504, dated 15-2-2006. Subsequently, the Corporation had issued a public notice in daily newspapers of Eenadu, dated 10-3-2006 and Deccan Chronicle on 11-3-2006 informing that the 3rd respondent-Nest Enterprises Private Limited had been awarded the rights of collection of advertisement fee on Neon Glow/Neon Sign Boards attached to shops, establishments, offices etc., including Arches, Balloons, Brand Names, Mobile Ads, Short Films, Slides, temporary shop attachment boards, umbrellas, bus shelters, pole panels, banners, wall paintings, shutter paintings etc., authorizing them to collect the advertisement fee on behalf

of the Corporation under Sections 420 and 421 r/w Section 622 (2) of the Act as per the schedule rates fixed by the Commissioner from time to time for the financial year 2005-2006, 2006-2007, 2007-2008, including the dues upto March, 2006 while making it clear that the agency will have all the rights to take measurements of the advertisement boards and issued demand notices and remove the boards/deface the same if the advertisement fee is not paid and appealed to all the concerned to cooperate with the agency i.e., 3rd respondent-Nest Enterprises Private Limited by making the advertisement fee in time. It is also further stated that by virtue of the privilege granted by the respondent-Corporation in favour of the 3rd respondent, the 3rd respondent-Nest Enterprises Private Limited issued demand notices to the petitioners on behalf of the Corporation for payment of advertisement fee on Neon/Glow Sign Boards within seven days from the date of the receipt of the notices and the demand notice issued by the respondent No.3 as per the schedule rates fixed by the respondent-Corporation. It is also stated that the Commissioner, Municipal Corporation of Hyderabad has power to accord permission under Section 421(1) of the Act to levy of taxes on advertisement other than advertisements published in the newspapers, etc., under Section 197 (f) of the Act and charge advertisement fee under Section 622 (2) of the Act and the contentions of the petitioners in this regard are untenable and unsustainable. It is also further stated that the Corporation had not delegated any powers of granting permission to any private agency under Sections 420, 421 of the Act except authorizing the 3rd respondent-Nest Enterprises Private Limited to collect the advertisement fee and to remove the unauthorized boards, on behalf of the respondent-Corporation. It is also further stated that the respondent-Corporation had not delegated any powers of granting permission to any private agency and the 3rd respondent-Nest Enterprises Private Limited had been awarded the contract of collection of advertisement fee duly

inviting tenders and conducting public auction after complying with all the requirements as per law and the 3rd respondent had issued demand notices to the petitioners for collection of advertisement fee in a lawful manner by following the due procedure of law i.e., taking measurement of board and issuing demand notices. It is also further stated that the contention of the petitioners and other shop owners who got similar notices had approached the 2nd respondent and explained that their name board of the shop will not come under the purview of Section 420(3) and 421 r/w Sec.622 of the Act is false and baseless and the petitioners contention that the Corporation is not empowered to impose advertisement fee for display of any advertisement is untenable, unsustainable and the same is denied. It is also stated that Sections 420 and 421 of the Act deal with the regulation and control of advertisements within the jurisdiction of Corporation limits and Section 622 deals with the condition, restrictions for granting licences and written permissions, revocation licences, fee to be chargeable etc., and based on the said provisions, the advertisement fee for different categories had been fixed and notified and the 3rd respondent is following the same. It is also further stated that the petitioners had never approached the respondents 1 and 2 and submitted any explanations, but however the petitioners are put to strict proof on which date they approached and explained. It is also stated that in fact the respondents had acted in accordance with the law duly following the procedure as contemplated under the Act and had not violated any provisions of law. It is stated that the petitioners with ill-motive and mala fide intention to avoid payment of advertisement fee and also to retain the display of unauthorized glow/sign boards, had made false allegations and filed the Writ Petitions. Section 420 of the Act deals with hoardings but not glow signs, which is clearly defined under Section 420 of the Act. It is also stated that the 3rd respondent-Nest Enterprises Private Limited had printed the demand notice in respect of all categories

of advertisements falling under Sections 420 and 421 of the Act including balloons which come under the category of sky sign and as such, the notices issued by the 3rd respondent-Nest Enterprises Private Limited are under Section 421 of the Act which pertains to illuminated glow sign boards. It is also further stated that under Section 421(1)(b) of the Act, if the advertisement is exhibited within the land or building in which the petitioners are carrying on business or trade they need not obtain permission provided that always that such permission shall not be necessary in respect of any advertisement which is not an illuminated advertisement nor a sky sign. It is also stated that the above provision is made applicable to non-illuminated boards only, but not to the illuminated boards erected by the petitioners and as such the contention of the petitioners is untrue, untenable and denied. Sections 420(3)(b) of the Act reads as follows:-

Section 420 (3)(b):-

> *"If any sky-sign be erected, fixed or retained contrary to the provisions of this section, or after permission for the erection fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by written notice require the owner or occupier of the land, building or structure, upon or over which the sky-sign is erected, fixed or retained, to take down and remove such sky-sign.*
>
> *The expression "sky-sign" shall in this section mean any word, letter, model, sign, devise or representation in the nature of an advertisement, announcement or direction, supported on or attached to any post, pole, standard frame work or other support wholly or in part upon or over any land, building or structure which, or any part of which sky-sign, shall be visible against the sky from some point in any street and includes all and every part of any such post, pole, standard, rame-work or other support. The expression "sky-sign" shall also include any balloon, parachute, or other similar device employed wholly or in part for the purpose of any advertisement, announcement or direction*

upon or over any land, building or structure or upon or over any street, but shall not include any sign, or any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blacking course of any wall, or to the ridge of a roof;

Provided that such board, frame or other contrivance be of one continuous face and not open work and do not extent, in height more than three feet above any part of the wall, or parapet or ridge to, against, or on which it is fixed or supported."

Section 421 (1)(b) of the Act also had been narrated in the counter affidavit and it is stated that the said provision is made applicable to non-illuminated boards only but not to the illuminated boards erected by the petitioners and as such the contention of the petitioner is not correct and maintainable. Likewise, Section 421 (4)(b) of the Act also had been explained. It is also further stated that non-payment of advertisement fee will render the boards unauthorised and will be removed after seven days after the issuance of demand notice and in order to avoid removal the boards the petitioners have to pay advertisement fee, failing which the petitioners have to face the consequences under the provisions of the Act. It is also stated that the exhibition/displaying of any illuminated board without the written permission of the Commissioner, Municipal Corporation of Hyderabad is an offence and punishable under Section 596 of the Act. Hence, it is prayed that the batch of Writ Petitions be dismissed.

5. The learned Standing Counsel representing the Municipal Corporation had placed before this Court the relevant records relating to the issue.

6. Sri Srihari, Sri Tulasiraj Gokul, Sri Narsing Rao, Sri Saifulla Baig, the learned Counsel representing the respective writ petitioners made elaborate submissions and would explain the meaning of

"advertisement", the meaning of "illumination" and the meaning of "illuminated advertisement board" and would also carefully analyse the different parts of the relevant statutory provision, Section 421 of the Act, and would contend that in the light of lack of clarity and absence of definitions in this regard it would be very difficult to fix or fasten the liability on all these petitioners and making such demands in general. The learned Counsel also while further elaborating the submissions had drawn the attention of this Court to Sections 119, 124, 169, 633 and 634 of the Act and would maintain that if the broad statutory scheme of the Act to be taken into consideration these statutory duties of making demand to be made by the Corporation or the officials of the Corporation alone and the same cannot be delegated to any other outside agency like the one in the present case. The learned Counsel also placed strong reliance on certain decisions to substantiate their respective stands.

7. Per contra, Sri Ganta Rama Rao and Ms.Jyothi Kiran, the Counsel representing the Municipal Corporation would contend that there is no delegation as such but it is only authorisation to a private agency to collect and the private agency is not permitted to collect any amounts exceeding the amounts which had been already fixed by the Municipal Corporation and inasmuch as the contract was entered into within the framework of the Act, the same cannot be found fault. The learned Counsel would further submit that absolutely there is no delegation and hence the demands made by the 3rd respondent cannot be said to be unauthorised demands or demands made without power or jurisdiction. The learned Counsel placed reliance on the relevant proceedings of the Municipal Corporation of Hyderabad by virtue of Resolution No.68. The learned Standing Counsel placed strong reliance on the respective resolutions to substantiate her contentions.

8. Sri O.Manohar Reddy, Counsel representing Sri Ramachandran, the learned Counsel representing Nest Enterprises

Private Limited would contend that inasmuch as notices had been issued in accordance with law the same cannot be found fault.

9. Heard the Counsel on record.

10. Section 421 of the Act reads as hereunder :

Regulation and control of advertisements:-

(1) No person shall without the written permission of the Commissioner, erect, exhibit, fix or retain any advertisement whether now existing or not, upon any land, building, wall, hoarding or structure:

Provided always that such permission shall not be necessary in respect of any advertisement which is not an illuminated advertisement nor a sky-sign and which –

(a) is exhibited within the window of any building;

(b) relates to the trade or business carried on within the land or building upon which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein, or to any sale, entertainment or meeting to be held upon or in the same, or to the trade or business carried on by the owner of any vehicle upon which such advertisement is exhibited;

(c) relates to the business of any railway administration;

(d) is exhibited within any railway station or upon any wall or other property of a railway administration except any portion of the surface of such wall or property fronting any street.

(2) Where any advertisement shall be erected, exhibited, fixed or retained after three months from the enactment of this section upon any land, building, wall, hoarding or structure save and except as permitted or exempted from permissions as hereinbefore provided, the owner of the person in occupation of such land, building, wall, hoarding or structure shall be deemed to be the person who was erected, exhibited, fixed or retained such advertisement in contravention of the provisions of this section unless he proves that such contravention was committed by a person not in his employment or under his control or was committed without his connivance.

(3) If any advertisement be erected, exhibited, fixed or retained contrary to the provisions of this section after the written permission for the erection, exhibition, fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by notice in writing, require the owner or

occupier of the land, building, fixed or retained, to take down or remove such advertisement.

(4)(a) The word "structure" in this section shall include a tram car, omnibus and any other vehicle and any movable board used primarily as an advertisement or an advertising medium; and

(b) the expression "illuminated advertisement" in this section shall not include an illuminated display of goods if such display –

(i) is of goods merely bearing labels showing the name of the article or of its manufacture or of both; and

(ii) is made of lighting which is not, in the opinion of the Commissioner, more than is necessary to make the goods and labels visible at night.

Section 119 of the Act dealing with **Municipal Officers may be empowered to exercise certain of the powers etc., of the Commissioner** reads :

"Any of the powers, duties or functions conferred or imposed upon or vested interest Commissioner by or under any of the provisions of this Act may be exercised, performed or discharged, under the control of the Commissioner and subject to his revision and to such conditions, if any, as may be imposed, or as he shall think fit to impose in a manner not inconsistent with the provisions of this Act or rules made thereunder, by any Municipal Officer whom the Commissioner generally or specially empowers by orders in writing in this behalf, and to the extent to which any municipal officer is so empowered the word "Commissioner" occurring in any provision in this Act shall be deemed to include such officer."

Section 169 of the Act deals with **Constitution of Municipal Fund** and Section 124 of the Act deals with **Power of the Commissioner to execute contracts on behalf of the Corporation** and the said provision reads as hereunder :

"With respect to the making of contracts under or for any purpose of this Act, the following provisions shall have effect, namely:-

(a) every such contract shall be made on behalf of the Corporation by the Commissioner;

(b) no such contract, for any purpose which in accordance with any provision of this Act, the Commissioner may not carry out without the approval or sanction of some other municipal authority, shall be made by him until or unless such approval or sanction has first of all been duly given;

(c) It shall be competent for Commissioner to make a contract other than a contract relating to the acquisition of immovable property or any interest therein or any right thereto, not involving any expenditure exceeding rupees twenty lakhs.

(d) Omitted by A.P. Act 3 of 1994, w.e.f. 1-3-1994;

(e) the foregoing provisions of this section shall, as far as may be apply to every contract which the Commissioner shall have occasion to make in the execution of this Act; and the same provisions of this section which apply to an original contract shall be deemed to apply also to any variation or discharge of such contract."

Section 622 of the Act deals with **Licenses and written permission to specify conditions, etc., on which they are granted**. Section 633 of the Act deals with **Service of bills for taxes by post.** Section 634 deals with **Signature on notices etc., may be stamped.** These are the relevant provisions which had been referred to by the Counsel on record.

11. The Counsel representing the respective parties in all fairness would submit that in the present case Section 420 of the Act dealing with **Regulations as to sky signs** is not applicable and Section 421 of the Act dealing with **Regulation and control of advertisements** alone would be applicable and strong reliance was placed on the proviso of sub-section (1) of Section 421 and sub-section 4(b) of the said provision. Elaborate submissions were made on the aspect of "advertisement" and also the meaning of "illuminated advertisement". These expressions are not defined under Section 2 of the Act dealing with **Definitions.** The Counsel representing the petitioners had placed strong reliance on the decision of Bombay High Court in **Ratiloku Shetty Vs. Municipal Corporation of Greater Mumbai**[1] wherein the learned Judge

observed :

> "The display of an illuminated name board on the premises of the business place does not amount to an advertisement. Putting up of the name board by illuminating the same to enable the public to read the same during night hours by no stretch of imagination can be considered in the sense of advertising of advertisement. During the day time the illumination is put off while at the night time it is put on. If the same board during the day time cannot be construed as an advertisement how during night time it would become an advertisement. Every person, every businessman and for that matter every industrialist has its legal right to display its name board on its premises to enable the public to know that what activities and under what name and title are carried on inside the premises. By sheer display of such a name board, even illuminated at night time, cannot be said that the concerned person was giving an advertisement of his product or services. The purpose of the display of name boards is to let the public know what was the place and where it is situated and what activities were going on inside the premises and what services were available therein. Secondly it is also for the convenience and to facilitate all those who are in search of the particular business place. As soon as such person who is I search of particular business place, would read the board, he would stop his search. Otherwise he would just go on asking the people where the required place is. The name boards are displayed for the people to know and to locate the place if they required such a place. Those who are not concerned and those who do not want such a place, activity or service would just read and ignore and walk further. Mere reading of the name board does not amount to advertising to attract the provisions of Sections 328 and 328-A of the Act. Further fact that illumination exceeding 25 watt bulb would also not convert itself into an advertisement."

This decision was delivered in relation to advertisement and display of illuminated name board in the context of Section 328-A of Bombay Municipal Corporation Act 1888. No doubt it is stated that the provisions of Section 328-A of the said Act are almost identical with Section 421 of the Act governing the Municipal Corporations in the State of Andhra

Pradesh. Strong reliance was placed on the decision of the learned single Judge of this Court in **Greeting Corner Vs. State of Andhra Pradesh** [2] wherein while considering the similar aspect ultimately the Writ Petition was dismissed as being devoid of merit. A Division Bench of this Court in **Andhra Bank Zonal Office, Koti, Hyderabad Vs. State of Andhra Pradesh and others** [3] while dealing with a similar aspect observed :

> "A perusal of the said provision makes it clear that no person without written permission of the Commissioner, shall erect, exhibit, fix or retain any advertisement, upon any land, building wall, hoarding or structure. Such written permission is not necessary, in respect of any advertisement, which is not an illuminated advertisement, nor a sky sign, which relates to the trade of business carried on within the land or building upon which such advertisement is exhibited.
>
> Therefore, the contention of the learned Counsel for the petitioner is that this glow signboard erected by the petitioner will not attract the provisions of Section 421 squarely. The learned Standing Counsel on the other hand contends that since it is self-illuminated glow signboard, it attracts the provisions squarely.
>
> In view of the competing claims, it shall have to be considered whether the glow signboard erected by the petitioner on its own premises is 'advertisement' or not. It is a mixed question of law and fact, which shall have to be decided considering the facts and circumstances, along with the provisions germane for consideration in the context. Inasmuch as the petitioner has submitted a representation to the respondents, which according to its own case, is pending consideration, we are not inclined to adjudicate the contentious issue as to whether the glow sign board erected by the petitioner attracts the provisions of Section 421 of the Hyderabad Municipal Corporation Act and is 'advertisement', consequently exigible to advertisement tax. Instead it is appropriate to dispose of the Writ Petition directing the petitioner to approach the authorities inviting an order on the representation made by it and directing the authorities to dispose of the same having regard to the significance attached to such

decision, which has wide range ramifications throughout the metropolis, as expeditiously as possible. It is also appropriate to direct the respondents, in our considered view, not to take any coercive steps for the collection of advertisement tax as proposed, nor to demolish signboard erected, pending consideration of its decision. In the meanwhile, we feel it appropriate to pass such orders as discussed hereinabove, having regard to the significance attached to the question involved and its wide range consequences in and around the metropolis, to avoid any future litigation."

Reliance also was placed on **Municipal Corporation of Greater Bombay Vs. Bharat Petroleum Corporation Limited** [4], **New Delhi Municipal Committee Vs. Allied Motors Private Limited** [5] and **Asian Paints India Limited, Bombay Vs. Additional Commissioner (Finance), Municipal Corporation, Hyderabad** [6]**.** Further strong reliance was placed on the decision of the Apex Court in **ICICI Bank Limited and another Vs. Municipal Corporation of Greater Bombay and others** [7] wherein the definition of "skysign" or "advertisement" used in the context of Sections 328 and 328-A of Bombay Municipal Corporation Act 1888 had been considered in elaboration. The learned Judges of the Apex Court in fact had referred to the undernoted decisions : ***Municipal Corporation of Greater Bombay Vs. Bharat Petroleum Corporation Limited (2002 AIR SCW 1554), Commissioner of Income-tax Vs. Sun Engineering Works (P) Ltd. (1992 AIR SCW 2600), Madhav Rao Scindia Vs. Union of India (AIR 1971 S.C. 530), Morelle Vs. Wakeling (1955) 1 All.E.R. 708, Paisner Vs. Goodrich (1955) 2 All.E.R. 330, Cull Vs. Inland Revenue Commissioners, (1939) 3 All.E.R. 761, Edwards Vs. Lubbock Country, 33 SW 2d 482 and First Nat. Corporation Vs. Perrine, 99 Mont 454 : 43 P 2d 1073*** and ultimately came to the conclusion that in the light of the fact situation the Corporation to decide the question of advertisement under Section 328-A

of the Bombay Municipal Corporation Act 1888 after communicating the bank a fresh date of hearing. The learned Judges at paras 20 and 21 while allowing the Appeal observed as hereunder :

> "From the aforesaid analysis, in all fact-situation and circumstances, at the outset it cannot be said that the sign boards indicating ATM Centers cannot have commercial interest but would only tell about the location of ATM Centres to the existing account holders only. Whether signboard of ATM Centre tantamounts to be an advertisement or not would depend upon the facts of each case, depending on the number of ATM Centres established by a particular bank in a particular locality or place or even city, to have the flavour of commercial or business interest of the service provider. In the present case no exercise was undertaken by the Municipal Authorities or the Bombay High Court before the High Court had reached to the conclusion that the signboards of the ATM Center put up by the ICICI Bank at different locations would be an advertisement within the meaning of Section 328-A of the Corporation Act. In fact the notices issued by the Bank to the appellant are under Sections 328, 328-A of the Corporation Act. The reach, ambit and scope of these sections are quite different and they operate in different fields. They do not completely overlap. In the circumstances, it was appropriate for the Corporation to issue notices to the appellant either under Section 328 or under Section 328-A of the Corporation Act and notice should not have been issued under both Sections for the same signboard. The Bombay Municipal Corporation Authorities seem to be in a state of doubt and hence the notices clearly do not specify under which section they propose to take action. As we have made it clear that in the present case the signboards of ATM Centers, which are not sky signs, are not covered under the provisions of Section 328 of the Corporation Act, the notices issued shall be deemed to have been issued under Section 328-A of the Corporation Act and the Corporation shall decide the question of advertisement under Section 328-A of the Act after indicating the Bank a fresh date of hearing.
>
> For the reasons stated the appeal is allowed and judgment and order of the High Court is set aside. Fresh steps can be taken in the light of the observations in this judgment. In the circumstances of the case we do not impose any cost and the

parties shall bear their own costs."

12. In the light of the fact-situation wherever the statute ordains a particular act to be done in a particular manner, the same may have to be done as specified therein unless and otherwise any other procedure be permitted to be followed in accordance with law. There cannot be any two opinions relating to this aspect. Making demand, collection of fee or collection of tax, these are all aspects governed by specific statutory provisions. It is needless to say that the Municipal Corporation of Hyderabad being creation of a statute and being a statutory body, the duties expected to be discharged or performed by the Corporation to be performed by the Corporation itself or through its officials and the realm or the operation of the private agencies and the scope and ambit thereof in relation thereto would be very very limited. This Court is not inclined to express any opinion relating to the contract said to have been entered by the Corporation in favour of a private agency. This Court also is not inclined to express any further opinion whether the private agency who had been entrusted with this duty had made excessive demands or only such demands which were specified by the Municipal Corporation as such. But however, in the light of the language employed in Section 421 of the Act, this Court is of the considered opinion that to attract the provisions of Section 421 of the Act, the Corporation must satisfy itself first that the provisions are attracted and hence the fee/demand can be levied. This exercise to be made in individual cases and in the peculiar facts and circumstances especially in the light of the decision of the Apex Court referred (7) supra and also the views expressed by the Division Bench of this Court referred (2) supra, this Court is of the considered opinion that the impugned demand notices as such cannot be sustained and accordingly the said demands made are hereby quashed and the matters are remitted to the Corporation to give opportunity to the individual writ petitioners to make their individual representations and let

the Corporation consider and look into such objections which would be raised by the respective writ petitioners and pass appropriate orders in this regard in accordance with law. Accordingly, let the petitioners make such representations as early as possible, preferably within a period of four weeks and the Corporation to take an early decision in relation thereto thereafter.

13. The Writ Petitions are accordingly allowed to the extent indicated above. No order as to costs.

_____
Justice P.S. Narayana

Date : 28-9-2006

L.R. copy to be marked : YES / NO

AM

---

[1] AIR 2001 Bombay 380

[2] W.P.No.4304/2003, dated 13-10-2004

[3] W.P.No.4089/2005

[4] AIR 2002 S.C. 1638

[5] AIR 1996 S.C. 388

[6] 2000(3) ALT 658

[7] 2005 AIR SCW 4031